

**PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COMMISSION DIRECTIVE**

ADMINISTRATIVE MATTER	<input type="checkbox"/>	DATE	<u>October 15, 2014</u>
MOTOR CARRIER MATTER	<input type="checkbox"/>	DOCKET NO.	<u>2011-158-E</u>
UTILITIES MATTER	<input checked="" type="checkbox"/>	ORDER NO.	<u>2014-833</u>

THIS DIRECTIVE SHALL SERVE AS THE COMMISSION'S ORDER ON THIS ISSUE.

SUBJECT:

DOCKET NO. 2011-158-E - Application Regarding the Acquisition of Progress Energy, Incorporated by Duke Energy Corporation and Merger of Progress Energy Carolinas, Incorporated and Duke Energy Carolinas, LLC - Discuss with the Commission Duke Energy Carolinas, LLC and Duke Energy Progress, Incorporated's Request for Limited Waiver of Code of Conduct Pricing Limitations Governing Contract Pricing with an Affiliate and Jurisdictional Matters.

COMMISSION ACTION:

In Order No. 2012-517, this Commission adopted regulatory conditions imposed by the North Carolina Utilities Commission ("NCUC") in the Duke-Progress merger case. Among the regulatory conditions adopted were certain pricing limitations included in the Code of Conduct ("Code") and a provision to be included in all affiliate contracts providing protection from Federal preemption. Duke Energy Carolinas, LLC (DEC) and Duke Energy Progress, Inc. (DEP) (together, the "Utilities") now request that the Commission grant a waiver of two of these regulatory conditions.

The first request for waiver concerns pricing limitations governing contract pricing with an affiliate contained in Section III(D)(3)(b) of the Code, so that those provisions will not apply to the Utilities' proposed Precedent Agreements, Service Agreements, and Negotiated Rate Agreements (collectively, the "Agreements") with Atlantic Coast Pipeline LLC. Duke Energy Atlantic Coast Pipeline, LLC, an unregulated subsidiary of Duke Energy Corporation, which is the parent company of DEC and DEP, is a member of Atlantic Coast Pipeline LLC. The second request for waiver concerns the provisions of Regulatory Condition 3.1(b), which requires that certain language providing protection from federal preemption be included in all affiliate contracts.

No party opposes the waivers. As to the first requested waiver, a letter from the Office of Regulatory Staff ("ORS") notes that the Utilities confirmed that the Agreements' pricing structure achieves the same end result and goal as Section III(D)(3)(b) of the Code. Accordingly, ORS does not oppose the first requested waiver. With regard to the second requested waiver, the Utilities explained that the contractual language required by Regulatory Condition 3.1(b) creates concerns, particularly to those contractual parties unaffiliated with the Utilities, that the contracts could be perceived as non-binding. Through monitoring the similar request for waivers in North Carolina, ORS learned that the Utilities agreed to substitute alternate language in the contracts in lieu of the 3.1(b) language in North Carolina. Although the substitute language was not included in the Utilities' filing requesting the waivers in South Carolina, ORS sought the same protections afforded by the substitute language used in North Carolina. ORS was provided a letter from the Utilities affirming that South Carolina would be afforded the same protections provided by the substitute language in North

Carolina. We have reviewed the alternate language and agree that it provides the same protections from pre-emption as the original Regulatory Condition 3.1(b).

Nucor Steel-South Carolina also filed a letter of non-opposition to the proposed waivers, which generally agreed with the positions taken by ORS.

To summarize, no opposition to the requests has been received. Also, with regard to the first request for waiver, according to the Office of Regulatory Staff, the pricing structure of the Agreements under consideration achieves the same end result and goal as the affiliate pricing limitations contained in Section III(D)(3)(b) of the Code of Conduct. Second, with regard to the waiver of Regulatory Condition 3.1(b), the Utilities have committed to providing South Carolina with the same protections afforded by the substitute language used in North Carolina, and we accept that commitment as providing equivalent protection from pre-emption. Accordingly, I move that the requested waivers be granted.

PRESIDING: Hall

SESSION: Regular

TIME: 2:00 p.m.

	MOTION	YES	NO	OTHER
ELAM	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
FLEMING	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HALL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HAMILTON	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HOWARD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
RANDALL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
WHITFIELD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

(SEAL)

RECORDED BY: J. Schmieding

